

Illinois Valley Community Hospital and Hospital Workers Joint Council, AFL-CIO (American Federation of Teachers; Firemen and Oilers Local No. 8; and the Hotel and Restaurant Employees, Local 327), Petitioner. Case 33-RC-2460¹

May 24, 1982

**SECOND SUPPLEMENTAL DECISION
AND ORDER AND DIRECTION OF
SECOND ELECTION**

**BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER**

On February 12, 1981, the National Labor Relations Board issued a Supplemental Decision and Order² herein in which it remanded for further hearing before a hearing officer the issues of whether the Employer's medical technologists are professional employees. On July 31, 1981, Hearing Officer Gerald V. Selvo issued his Report and Recommendations on Challenged Ballots in which he found that the medical technologists were not professional employees. Thereafter, the Employer filed exceptions and a supporting brief, and the Petitioner filed cross-exceptions and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the record in light of the exceptions and briefs, and has decided to find, for the reasons set forth below, that the medical technologists are professional employees, and to set aside the election and direct a second election.

The medical technologists whose status is at issue here are required to have obtained a bachelor's degree in medical technology or a related science and to have passed a qualifying examination given by the American Society of Clinical Pathologists (ASCP). The Employer must insure the educational background of its medical technologists in order to retain its accreditation from the Joint Commission of Hospital Accreditation. Medical laboratory technicians, on the other hand, need only an associate college degree and may, but are not required to, take and pass a simpler ASCP examination than that given to the medical technologists.

¹ This case was formerly consolidated with Case 33-RC-2459; however, in its Supplemental Decision and Order, the Board amended the caption to delete Case 33-RC-2459 since that case is no longer before the Board.

² Not published in bound volumes of Board Decisions. A previous Decision and Order in this proceeding is reported at 249 NLRB 410 (1980).

The medical technologists perform and evaluate a broad spectrum of clinical laboratory tests involving the disciplines of histology, bacteriology, chemistry, serology, hematology, urinalysis, and blood banking. Most, but not the most difficult, of these tests also are performed by medical laboratory technicians (MLTs). Finding that the functions performed by the MLTs are essentially the same as those performed by the medical technologists, and noting that the MLTs concededly are not professionals, the Hearing Officer concluded that the medical technologists likewise are not professionals. We find that, by focusing on the work functions of the MLTs and the similarities of functions performed rather than on the criteria establishing professional status and the totality of the background, experience, and work responsibilities of the medical technologists, the Hearing Officer used the wrong test for determining their professional status and consequently, reached an erroneous conclusion.³

Section 2(12) of the Act, in pertinent part, defines a "professional employee" as:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes. . . .

As the Board observed in its Supplemental Decision and Order remanding this case for further hearing, the Board, in other cases, has found medical technologists with similar educational backgrounds and who performed comparable work functions as those described in the record then before it to be professional employees.⁴ The sup-

³ Inasmuch as we have reviewed the record and drawn from it all the inferences necessary to reach the result sought by the Employer, we find it unnecessary to entertain the Employer's exceptions to the Regional Director's appointment of the same Hearing Officer who had previously heard the case and decided it adversely to the Employer and to the Hearing Officer's alleged predisposition regarding the case.

⁴ E.g., *Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Memorial Hospital Center*, 217 NLRB 775, 782 (1975); *Children's Hospital of Pittsburgh*, 222 NLRB 588, 590 (1976).

plemental record contains nothing to dispute that observation. The Hearing Officer, however, apparently concluded from the supplemental record that, unlike the cases cited by the Board, here the work engaged in did not meet the criterion of "predominantly intellectual and varied . . . as opposed to routine." We do not agree. The Hearing Officer correctly concluded that the professional status of an employee is not determined simply by the possession or lack of a baccalaureate degree, and certainly is not determined by a job title that corresponds to one which the Board has had before it in other cases. However, we are not persuaded that the distinctions the Hearing Officer has attempted to draw between this and the earlier cases are sound. The Hearing Officer rests his conclusion on the fact that the Employer's MLTs are capable of performing most of the laboratory tests which the medical technologists perform, albeit with less proficiency.

This line of analysis may or may not distinguish the MLTs here from those in earlier cases. It does not, however, show that the medical technologists are deficient in the essential qualifications that gave their counterparts professional status in those cases. For example, that union representatives who are not statutory professionals act as counsel for their unions in Board proceedings does not put into question the professional status of attorneys who perform the same function. Here, the Employer's medical technologists are, and are expected to be, more proficient, and perform tests which the MLTs are not assigned.⁵ These differences, as the

record establishes, are attributable at least in part to the medical technologists' specialized educational background. This is precisely the kind of difference that bridges the sometimes fine line between non-professional and professional status. See *The Express-News Corporation*, 223 NLRB 627, 629-631 (1976).

We also regard as indicative of professional status the medical technologists' responsibility to keep abreast of developments in their field. Cf. *Barnert Memorial Hospital Center*, *supra* at 782.

On balance, although the medical technologists spend some of their time in nonprofessional activities, we conclude that their work is predominantly intellectual and is sufficiently varied to meet the appropriate part of the statutory test, and that they meet all of the other statutory criteria. Accordingly, we find that they were professional employees at the time of the election and were improperly included in the bargaining unit; and, as their votes may have been determinative, we shall set aside the election and direct a second election.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the election conducted herein on August 17, 1979, be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication].

⁵ The Employer employs only three MLTs. That one or more of them may have, with experience, achieved the skill to perform as competently as a medical technologist is to his or her credit. It may even mean that he or she is performing at a professional level and should be recognized as

such—a proposition that neither party is here urging. But see *Marcus Lawrence Memorial Hospital*, 249 NLRB 608, 616 (1980) (James Randall). However, nothing in the record establishes that the Employer requires of the MLTs that they perform at such a level, even after years of experience. Cf. *The Chesapeake & Potomac Telephone Company of Maryland*, 192 NLRB 483, 484 (1971).